

REMARKS

This Supplemental Amendment After Final is being submitted in response to the Advisory Action of November 6, 2003 and at the request of Supervisory Patent Examiner Amy Nelson and puts the claims in form for allowance as suggested by Supervisory Patent Examiner Amy Nelson on November 7, 2003.

The present application relates to inbred maize line X1139Y. Applicant has now added new claims 64-76 which have been agreed upon as allowable by Supervisory Patent Examiner Amy Nelson. Claims 5-8, 20, and 42-63 were previously canceled in the Amendment After Final filed on September 2, 2003, claims 5-8, 20, 33, and 42-62 were previously canceled in the Amendment After Final filed September 2, 2003 and claims 9-19 and 21-41 were previously canceled in the Amendment of March 26, 2003.

Applicant would like to reiterate that the actual ATCC deposit will be delayed until receipt of notice that the application is otherwise in condition for allowance. As provided in 37 C.F.R. §§ 1.801-1.809, Applicant wishes to reiterate they will refrain from deposit of hybrid maize plant X1139Y and the inbred parents GE565937 and GE502199 until allowable subject matter is indicated. Once such notice is received, an ATCC deposit will be made, and the specification will be amended to contain the accession number of the deposit, the date of the deposit, description of the deposited biological materials sufficient to specifically identify and to permit examination and the name and address of the depository. The claims will also be amended to recite the proper ATCC deposit numbers. The Applicant provides assurance that:

- a) during the pendency of this application access to the invention will be afforded to the Commissioner upon request;
- b) all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent;
- c) the deposit will be maintained in a public depository for a period of thirty years, or five years after the last request for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit will be conducted (see 37 C.F.R. § 1.807); and
- e) the deposit will be replaced if it should ever become inviable.

Therefore, Applicant submits at least 2500 seeds of hybrid maize plant X1139Y and the inbred parents GE565937 and GE502199 will be deposited with the ATCC.

Applicant respectfully submits all of the changes in this Supplemental Amendment After Final do not add new matter as there is support for the claims in the originally filed specification as stated in the Amendment After Final submitted on September 2, 2003. Entry of this Supplemental Amendment After Final and approval of the changes is respectfully requested.

Applicant acknowledges that claims 1-7, 51, 52, and 54 are allowed. Applicant further acknowledges that new claims 64-76 have been agreed upon as allowable by Supervisory Patent Examiner Amy Nelson as aforementioned, thereby placing these claims in form for allowance. Applicant has canceled all non-allowable claims thereby placing the application in condition for allowance and has complied with all requirements of form set forth in previous office actions.

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

Please consider this a three month extension of time from September 2, 2003 to December 2, 2003 under the provision of 37 C.F.R. § 1.136(a) and charge Deposit Account No. 26-0084 for the amount of \$950.00. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any fees inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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